

GVNW Consulting, Inc.  
Comments in CC Docket No. 96-45, DA 05-3000  
December 2, 2005

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Wireline Competition Bureau seeks	)	CC Docket No. 96-45
comment	)	
on petitions requesting waiver of	)	DA 05-3000
various filing deadlines related to the	)	
universal service program	)	
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**COMMENTS OF GVNW CONSULTING, INC.**

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### **Executive Summary**

We support the Commission granting the requested waivers and offer some additional recommendations with respect to streamlining the process for carriers that have committed filing deadline infractions that are properly characterized as ministerial types of errors.

. All carriers strive to meet each and every deadline. But, in a system with the possibility of human error present, perfection is not always achieved. In order for the deadlines to have their desired impact, missing a deadline should generate some type of consequence. However, the current penalties for missing some of the filing deadlines are excessive. Even in the case of perhaps the most commonly recognized federal deadline of personal income taxes, filing a few days late without an extension creates a less draconian penalty than that currently experienced by several of the applicants that are filing for waivers in the instant proceeding.

The Commission should consider implementing a streamlined system that would permit the Wireline Competition Bureau to provide relief to a

carrier that misses a filing deadline due to a ministerial error by reinstating the funding from the support mechanism in an expedited manner, not to exceed ninety (90) days from the date the carrier files its waiver.

The granting of the requested waivers that are the subject of this Public Notice is consistent with recent Commission precedents and will serve to advance the public interest. Further, such waivers will benefit consumers in rural and high-cost regions of the country by promoting the provision of universal service.

## **INTRODUCTION AND BACKGROUND**

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, access charge reform, and strategic planning for communications carriers in rural America. The purpose of these comments is to respond to the Public Notice released by the Commission on November 18, 2005 in the above-captioned docket.

We support the Commission granting the requested waivers and offer some additional recommendations with respect to streamlining the process for carriers that have committed filing deadline infractions that are properly characterized as ministerial types of errors.

As the industry intercarrier compensation paradigm evolves, we anticipate that more rural carrier cost recovery will be shifting to universal

service support mechanisms. This evolution creates an even greater need for the Commission to consider a more streamlined process of approving waivers for carriers that have found themselves in the unfortunate situation of having committed a ministerial type of error.

We respectfully request the Commission consider the proposed ninety day timetable for ministerial error waiver processing. In light of the increasing importance that universal service support will play for rural carriers in the years ahead, the time is right for the Commission to implement streamlined waiver procedures as a part of its universal service program.

#### COMMISSION RULES REGARDING FILING DEADLINES SHOULD BALANCE THE NEEDS OF THE ADMINISTRATOR WITH THE NEEDS OF THE CARRIER

Filing deadlines are necessary for the smooth operation and orderly administration of federal universal service fund programs. All carriers strive to meet each and every deadline and recognize the importance of meeting such requirements. But, in a system with the possibility of human error present, perfection is not always achieved. In order for the deadlines to have an impact, missing a deadline should generate some type of consequence.

However, the current penalties for missing some of the filing deadlines are excessive. For example, in the case of a carrier's Local Switching Support

(LSS), it is not stated explicitly in the Commission's rules (Section 54.301) what penalties should be associated with late filed data. Nonetheless, the USAC has indicated to carriers that if the data is not filed by October 1, no local switching support will be provided to that carrier for the following calendar year without receipt of a waiver. Thus, if an eligible telecommunications carrier misses the annual October 1 filing deadline by even one day, the result is the loss of LSS support for an entire year, absent the grant of a FCC waiver<sup>1</sup>.

While the high-cost support rules at Section 54.314(d) specify calendar quarters for which support will be missed if deadlines are not adhered to, and ICLS rules at Section 54.903 specify deadlines, we respectfully request the Commission not permit USAC to follow a policy that would appear to be "form over substance" with regard to the provision of vital universal service support to rural carriers.

#### ERRORS OF A MINISTERIAL NATURE SHOULD BE TREATED ACCORDINGLY

In its recent ongoing docket on USF Administration and Oversight<sup>2</sup>, the Commission posed questions about ministerial type errors. We

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<sup>1</sup> It is worth noting that the Commission has extended the filing dates for various universal service reports for carriers impacted by Hurricane Katrina until January 26, 2006. While wholly appropriate, it demonstrates that USAC is capable of integrating "late filed" data after the proscribed filing dates.

<sup>2</sup> Notice of Proposed Rulemaking (NRPM) and Further Notice of Proposed Rulemaking (FNPRM) in WC Docket Nos. 05-195, 02-60, and 03-109; CC Docket Nos. 96-45, 02-6, and 97-21 released by the Commission on June 14, 2005

respectfully submit that it is also appropriate for support mechanism filing deadline rules to treat ministerial error in a prudent manner. With the amount of data that is input related to support mechanisms, there will be an occasional input or logistical type error. Logistical type errors include matters such as missing an overnight express delivery deadline<sup>3</sup>.

In terms of penalties, the appropriate level of penalty for a ministerial error should not unduly penalize the carrier and concomitantly the rates it must charge its customers to recover its costs.

The Commission should consider implementing a streamlined system that would permit the Wireline Competition Bureau (WCB) to provide relief to a carrier that misses a filing deadline due to a ministerial error by reinstating the funding from the support mechanism in an expedited manner, not to exceed ninety (90) days from the date the carrier files its waiver. During the ninety day period the WCB would have an opportunity to determine what sanctions, if any, would be imposed on the carrier. At a date no later than 90 days from the waiver filing, the relief would be granted.

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<sup>3</sup> In its waiver filing, Northwest Dakota Cellular of North Dakota Limited Partnership stated that its data was received at the USAC offices at 9:34 a.m. on October 1. From a business day clock perspective, this is only 94 minutes after the filing deadline. It is reasonable to assume that this carriers' data would easily have been processed and included with all the data received on or before the prior business day by USAC.

The fact that carriers should exhaust all efforts to ensure that deadlines are not missed is not being debated. However, penalizing a carrier an entire year of universal service support for missing a deadline for a few hours or few days that results in little or no administrative difficulty to USAC does not comport with the Congressional mandate that universal service should be “predictable and sufficient.”

Even in the case of perhaps the most commonly recognized federal deadline of personal income taxes, filing a few days late without an extension creates a less draconian penalty than that currently experienced by several of the applicants that are filing for waivers in the instant proceeding.



## THE COMMISSION HAS GRANTED WAIVERS FOR SIMILARLY SITUATED CARRIERS

Recently, the Commission has granted waivers for carriers that have experienced similar difficulties. On October 27, 2005, the Wireline Competition Bureau granted a waiver of a universal service filing requirement<sup>4</sup> to Citizens Communications and Frontier Communications (Frontier) (DA 05-2829) under similar circumstances to several of the applicants in this instant matter. Frontier had previously submitted data on a timely basis, and missed a deadline by a few days. The potential loss of the universal service support would have created a significant hardship to the carriers that serve rural, high-cost areas.

On November 22, 2005, the Wireline Competition Bureau also granted petitions (DA 05-3024) for Alliance Communications Cooperative, Inc. and Hills Telephone Company, Inc.; East Ascension Telephone Company, LLC; and Columbus Telephone Company. At paragraph 9 of DA 05-3024, the statement is made that:

*Quality service available at just, reasonable and affordable rates is a fundamental princip[al] of the Commission's universal service policies. We find that denying LSS for an entire calendar year to these small LECs would undermine this goal. (footnotes omitted)*

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<sup>4</sup> We note that the Commission acted on this petition in a timely manner and recommend that this type of response timeframe is what could and should be achieved with respect to petitions for relief of ministerial errors.

The granting of the requested waivers that are the subject of this Public Notice is consistent with these recent Commission precedents and will serve to advance the public interest. Further, such waivers will benefit consumers in rural and high-cost regions of the country by promoting the provision of universal service.

#### THE PUBLIC INTEREST IS SERVED WHEN SUPPORT IS PROVIDED TO RURAL AREAS

Under Commission rules, Section 1.3 permits for a waiver of a rule when good cause is shown. Prior waiver precedents allow the Commission to waive rules where the particular facts and circumstances render strict compliance inconsistent with the public interest<sup>5</sup>. In other situations, the Commission is allowed to consider issues of hardship, equity, or a more effective implementation of public policy<sup>6</sup>.

The Commission has granted petitions for waiver of certain ETC filing deadlines in order to facilitate ETC receipt of universal service support, despite inadvertent failures to adhere to USAC filing deadlines.

Without the grant of the requested waivers, the Commission will allow a view that could be considered as an egregious exercise of “form over

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<sup>5</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>6</sup> *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Circ. 1969), *cert. denied*, 409 U.S. 1027 (1972).

substance” to circumvent the fundamental universal service goals of the Telecommunications Act of 1996. Rural carriers rely on universal service support to provide their customers with high quality, ubiquitous service at reasonable and affordable rates. The loss of predictable universal service support would be disruptive to the petitioning carriers and would likely affect the rates that the petitioning carriers would need to charge their customers.

In its comment filing<sup>7</sup> in the ongoing USF Administration and Oversight docket, the NECA offers some relevant observations, stating in part:

*Similarly, the Administrator should not be required to impose harsh penalties on companies for minor errors associated with certifications and data submissions. In recent years the Commission has frequently been called upon to grant waivers of deadlines where carriers have failed to submit certifications or data submissions on time despite having made reasonable efforts to comply with applicable deadlines. (fn omitted) Rigid adherence to such deadlines means that it is possible for carriers to lose support for an entire quarter, or even longer, if a certification or data submission deadline is missed by so much as a day. This imposes unnecessary and unreasonable burdens on small companies, who must incur significant expense and uncertainty associated with waiver petitions as a result of minor ministerial errors. Rule provisions prohibiting the Administrator from “interpreting” Commission rules notwithstanding, effective program Administration requires that the Administrator be given latitude to make reasonable*

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<sup>7</sup> Notice of Proposed Rulemaking (NRPM) and Further Notice of Proposed Rulemaking (FNPRM) in WC Docket Nos. 05-195, 02-60, and 03-109; CC Docket Nos. 96-45, 02-6, and 97-21 released by the Commission on June 14, 2005, NECA comments at October 18, 2005, pages 17-18.

*judgments regarding compliance with deadlines and other ministerial matters.*

Simply stated, NECA's opinion that the Administrator be allowed a reasonable amount of flexibility to accept late filings without the need for Commission waiver action is on point. The current average response time to waiver requests by the Commission for relief of ministerial errors is not as responsive as was contemplated by Congress when the principles of "sufficient and predictable" were included in the Telecommunications Act of 1996. While we recognize that the Commission is faced with many pressing issues on a constant and continuous basis, the cash flow impacts to carriers that have 2003 and 2004 waivers granted in 2005 is an issue that we respectfully submit requires a more rapid response on the part of the Commission.

Respectfully submitted

Via ECFS on 12/2/05

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